

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Appeal No. 14621 of the Portsmouth Construction Corporation, pursuant to Sections 3200.2 and 3201.2 of the Zoning Regulations, from a decision of the Zoning Administrator dated April 1, 1987 which provides that the subject premises must be subdivided in compliance with Section 101.6 to permit construction of a single family dwelling in an R-1-B District at premises 3227 Livingston Street, N.W. (Square 2024, Lot 24).

HEARING DATE: July 8, 1987
DECISION DATE: July 8, 1987 (Bench Decision)

FINDINGS OF FACT:

1. The subject site is located on Livingston Street, N.W. with Morrison Street, N.W. to the north, 33rd Street to the west, and Nebraska Avenue, to the south and east. The property is located in an R-1-B District.

2. Lot 24 comprises 5,300 sq. feet and is unimproved; the lot has never been developed. Lot 24 was created and recorded as a lot of record on August 31, 1911 in Book 42, Page 21 in the Office of the Surveyor of the District of Columbia. The property is 40 feet wide, as are the majority of the lots in the vicinity. The remainder of the lots in Square 2024, and adjacent Square 2023 and 2025 have been fully developed with single family dwellings.

3. The Appellant proposes to develop the property as a single family residence.

4. Lot 24 and the identical Lot 25, just to the west, were owned by the same owner for 40 years. The owner constructed a house on Lot 25 in 1941. Lot 24 was purchased by Mr. Allen in 1945 and kept vacant with the ultimate intent to develop it with a single family dwelling.

5. The subject record lot is compatible in square footage and lot width with the majority of other lots in the vicinity and complies with the 80 percent rule for pre-1958 lots, as specified in Section 401.2. Almost every lot in Square 2024 and adjacent squares were developed with single family dwellings prior to 1958 Zoning Regulations.

6. In September 1981, the prior owner of the property applied for a single assessment and taxation (A & T) lot to combine the record lots (Lots 25 and 25) solely for tax assessment purposes. A & T Lot 828 was created. The prior owner testified that he was assured that the establishment of a tax lot would not affect his right to use or develop the properties.

7. The prior owner testified that when he decided to sell the properties separately, the lots were divided into two tax lots (Lots 830 (24) and 825 (25)). The boundaries of the lots were not changed in any manner and the lot width of each lot remained 40 feet wide.

8. The Appellant and the prior owner of the property testified that neither took any actions to change the property's status as a record lot. The Appellant purchased the property in reliance that it was a record lot. An official building plat was issued by the Surveyor's Office and a building permit was issued by the Department of Consumer and Regulatory Affairs (DCRA). The Appellant began in good faith to implement his plans in reliance on the city's actions.

9. The Assistant Surveyor of the District of Columbia confirmed through certification of official records of the Office of the Surveyor that Lot 24 has been and continues to be a validly existing lot of record (Book 202, Page 49).

10. The D.C. Department of Finance and Revenue continues to appraise and tax the lot as a buildable lot.

11. The Zoning Administrator denied the applicant's building permit application. The Zoning Administrator determined that based upon the actions of the previous owner in obtaining lots for assessment and taxation purposes, the provisions of Section 401.2 were no longer applicable and variance relief was necessary from the lot width requirements of Section 401.3 and the subdivision requirements of Section 101.6.

12. The Board notes a D.C. Corporation Counsel Opinion, Creation of Assessment and Taxation Lots within Record Lots, April 6, 1977 memorandum to James J. Fahey, Acting Chief, Zoning Regulation Division, Department of Housing and Community Development, from Louis P. Robbins, Principal Deputy Corporation Counsel. The Corporation Counsel Opinion provides that:

This is to confirm my oral advice to you that it is legally permissible to create assessment and taxation Lots (A & T Lots) within a recorded lot.

The two land description systems relevant hereto are "lots of record" and "A & T lots". Each has its own purpose and function; each has its own basis in law.*** The purpose and intent of the record lot system is to implement the orderly development of land by providing for specific subdivision controls. This system is the ground floor on which the specific land use controls of the Zoning Regulations are built.*** Thus, it is clear that the record lot system and the Zoning Regulations are integral parts of a regulatory scheme to control development in the District of Columbia and ownership of land plays no part in this scheme. A & T lots, on the other hand, serve no land control purpose, but are merely ownership descriptions for assessment and taxation purposes.

Section 1302.2 [101.6] must be viewed in the context of the two lot designation systems; the A & T lot which is created for assessment and taxation purposes and only serves that function and the record lot which is created as the cornerstone of land development control.*** The creation of an A & T lot is not a "division", it is merely the recognition of ownership of a particular piece of real property for assessment and taxation purposes as required by law. Corporation Counsel Opinion, at 1-3.

13. The property owners adjacent to Lot 24, at 3221 Livingston (Lot 69) and 3229 Livingston (Lot 25), intervened in this proceeding in support of the Zoning Administrator's ruling.

14. The Board finds that the intervenors to this proceeding and the Appellant have reached an agreement as to issues related to the development of a single family dwelling for Lot 24.

15. By letter dated May 13, 1987 and reiterated by a letter dated June 29, 1987, Advisory Neighborhood Commission (ANC) 3G stated that it supported the findings of the Zoning Administrator that Lot 24 was not a building lot. The Board finds that the ANC report provided no basis for this finding.

CONCLUSIONS OF LAW AND OPINION

Based on the foregoing Findings of Fact and the evidence of record, the Board concludes that the Appellant's have demonstrated that the Zoning Administrator's decision was in error. The Board concludes that the creation of an assessment and taxation lot, without physical changes to the boundaries of a lot, does not affect in any way a lot's

status as a record lot. The Board concludes that the system of record lots as found in the Office of the Surveyor of the District of Columbia controls for zoning purposes.

The Board concludes that the owners of Lot 24 have taken no actions to change the status of (Lot 24) as a record lot. The D.C. Surveyor's Office issued a plat showing the lot as a record lot. The Board further concludes that Lot 24 continues to be a record lot.

Accordingly, it is ORDERED that the Appellant's appeal is hereby GRANTED, and the decision of the Zoning Administrator is overturned.

VOTE: 4-1 (Charles R. Norris, Carrie L. Thornhill, Paula L. Jewell, and Lindsley Williams to grant; William F. McIntosh opposed).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: MAR 10 1989

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

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